

PEARSON, J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

AKRON BOARD OF EDUCATION,)	
)	CASE NO. 5:16CV188
Plaintiff,)	
)	
v.)	JUDGE BENITA Y. PEARSON
)	
JASON D. WALLACE, <i>et al.</i> ,)	
)	
Defendants.)	<u>ORDER</u> [Resolving ECF Nos. 14, 20]

Pending before the Court are Plaintiff's Motion to Consolidate the above-captioned case and [*Barney v. Akron Board of Education, Case No. 5:16cv112*](#) ([ECF No. 20](#)) and Plaintiff's Motion to Strike Defendant's Notice of Supplemental Authority ([ECF No. 14](#)). For the reasons provided below, the Court denies the motion to consolidate and grants the motion to strike.

I. Plaintiff's Motion to Consolidate (ECF No. 20)

Plaintiff filed a Motion to Consolidate this case, a claim for attorney's fees, with [*Barney v. Akron Board of Education, Case No. 5:16cv112*](#), the administrative appeal from which this claim arose.

Pursuant to [Federal Rule of Civil Procedure 42\(a\)](#), a court may consolidate two or more cases if the actions involve a common question of law or fact. [Fed. R. Civ. P. 42\(a\)\(2\)](#). “Whether cases involving the same factual and legal questions should be consolidated for trial is a matter within the discretion of the trial court” [*Cantrell v. GAF Corp., 999 F.2d 1007, 1011 \(6th Cir. 1992\)*](#). In deciding whether to consolidate cases for trial, the court considers the

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following factors: (1) whether the specific risk of prejudice and possible confusion are outweighed by the risk of inconsistent adjudication of common factual and legal issues; (2) the burden on the parties, witnesses, and available judicial resources posed by multiple lawsuits; (3) the length of time required to conclude multiple suits as opposed to a single one; and (4) the relative expense to all parties of a single trial versus multiple trials. [Cantrell, 999 F.2d at 1011.](#)

Because the cases differ significantly in substance and procedural posture, they are unsuitable for consolidation. In this instance, there would be little benefit from consolidating the two actions. Both cases are already on the Court's docket, and consolidation would not give the Court a more thorough understanding of the issue than it has now. Moreover the issues are fairly distinct and do not lend themselves to consolidation. The case at hand is an action for attorney's fees. *Barney* is an administrative appeal dealing with a student's right to public education and disability accommodations. Furthermore, consolidation of the cases would do little to promote judicial economy. Given that the cases are at different procedural postures, the Court would, for the most part, still have to handle the two matters separately.

For the reasons above, Plaintiff's Motion to Consolidate is denied.

II. Plaintiff's Motion to Strike (ECF No. 14)

Plaintiff has filed a Motion to Strike Defendants' Notice of Supplemental Authority ([ECF No. 13](#)). [ECF No. 14](#). Defendants filed a Motion for Judgment on the Pleadings. [ECF No. 6](#). As a supplement to its brief in support of the motion ([ECF No. 7](#)), Defendants filed a letter of findings issued by the Denver, Colorado division of the Office for Civil Rights agency ("OCR"). [ECF No. 13](#). In that proceeding, the OCR evaluated a student's discrimination claim, alleging

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that the school exposed him to serious food allergens. *Id.* at PageID #: 281–83. The OCR ultimately held that the school’s failure to accommodate the student’s allergies amounted to a failure to provide free appropriate public education. *Id.* at PageID #: 286. Defendants assert that the decision is instructive because it helps illustrate the “seriousness of the underlying administrative proceedings[.]” [ECF No. 13 at PageID #: 278](#).

Generally, a court must evaluate a [Rule 12\(c\)](#) motion for judgment on the pleadings based on the sufficiency of the complaint as it stands. See [Northville Downs v. Granholm](#), 622 F.3d 579, 585 (6th Cir. 2010); [Max Arnold & Sons, LLC v. W.L. Hailey & Co., Inc.](#), 452 F.3d 494, 502–03 (6th Cir. 2006). If a court fails to exclude outside evidence, the [Rule 12\(c\)](#) motion generally converts to a motion for summary judgment, requiring notice to both parties and an opportunity for them to submit additional evidence. [Max Arnold & Sons, LLC](#), 452 F.3d at 504. There are, however, limited instances where a party may submit supplemental authority for a motion for judgment on the pleadings. For example, if there has been a change in the relevant law, supplemental authority would be proper. See, e.g., [General Elec. Co. v. Latin American Imports, S.A.](#), 187 F.Supp.2d 749, n.1 (W.D. Ky. 2001) (explaining that notice of supplemental authority “when utilized for the purpose of supplementing argument on pending motions, should be used sparingly and for new, controlling case law . . .”); [Young v. CACH, LLC](#), No. 4:12CV0399, 2013 WL 999237 (N.D. Ohio 2013) (reasoning by analogizing to the Federal Rules of Appellate Procedure 28(j) that supplemental authority was improper).

Defendants present no evidence that this filing reflects some recent development in the law. In fact, the case is not particularly relevant to the Court’s evaluation of Plaintiff’s

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Complaint. A letter of findings from an Office of Civil Rights located in Colorado is not binding authority on a court in the Northern District of Ohio. Moreover, the letter was never intended to be used as binding precedent. As the OCR noted in its conclusion:

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such.

[ECF No. 13 at PageID #: 285.](#)

Furthermore, although Defendants purport to include the letter of finding to help explain the severity of the underlying administrative case, the letter is of little value. [*Id.* at PageID #: 278.](#) Given that the Court is also considering the underlying administrative appeal in a separate matter, the Court is already aware of its seriousness. Additionally, the cited letter ruling deals exclusively with the substantive matters at issue in the administrative appeal, and does nothing to illuminate the issue of attorney's fees—the pertinent matter in this case.

Accordingly, for the aforementioned reasons, Plaintiff's Motion to Strike is granted.

IT IS SO ORDERED.

September 6, 2016
Date

/s/ Benita Y. Pearson
Benita Y. Pearson
United States District Judge